

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

United States of America,
Plaintiff,

v.

Ira W. Gentry, Jr. and Randy W. Jenkins,
Defendants.

CR 06-464-PHX-SRB
RESTITUTION ORDER

The Court held a hearing to determine restitution on Monday, May 18, 2009, at 1:30 p.m. All parties were heard regarding their respective positions regarding restitution.

1. Evidence considered. The United States Attorney's Office received approximately 123 victim impact statements, many of which are accompanied by documents offered in support of victims' claims. The United States offered these 123 submissions from the victims, the spreadsheet and trial exhibit 110 into evidence without objection.

2. Applicable Law. A crime victim has a "right to full and timely restitution as provided in law." Crime Victims' Rights Act, 18 U.S.C. § 3771(a)(6). Restitution to Gentry's and Jenkins' victims is mandated by law, specifically the Mandatory Victim Restitution Act, which provides that the Court shall order restitution to the victim of "any offense committed by fraud or deceit," 18 U.S.C. § 3663A(c)(1)(A)(ii). Restitution shall be ordered in the full amount of a victim's loss without regard for the defendants' ability to pay, 18 U.S.C. § 3664(f)(1)(A). "Victim" means a person directly or proximately harmed as a result of the commission of an offense which involves as an element a "scheme" or "conspiracy." 18 U.S.C. § 3663A(a)(2).

1 Restitution is meant to compensate victims “for actual losses caused by the defendant’s
2 criminal conduct.” *United States v. DeLaFuente*, 353 F.3d 766, 771 (9th Cir. 2003)(quoting
3 *United States v. Gamma Tech Industries, Inc.*, 265 F.3d 917, 926 (9th Cir. 2001).) The criminal
4 conduct “must have caused a loss for which a court may order restitution, but the loss cannot be
5 too far removed from the conduct.” *Gamma Tech*, 265 F.3d at 928. “The causal chain may not
6 extend so far, in terms of the facts or the time span, as to become unreasonable.” *Id.*

7 Restitution claims may be established by a preponderance of the evidence. *United States*
8 *v. Waknine*, 543 F.3d 546, 557 (9th Cir. 2008). The Court may rely upon any evidence that
9 possesses “sufficient indicia of reliability to support its probable accuracy.” *Id.* (quoting *United*
10 *States v. Garcia-Sanchez*, 189 F.3d 1143, 1148-49 (9th Cir. 1999).)

11 Trial judges have “a degree of flexibility in accounting for a victim’s losses.” *Waknine*,
12 543 F.3d at 557. “Congress intended the restitution process to be expedient and reasonable, with
13 courts resolving uncertainties with a view toward achieving fairness to the victim.” *United*
14 *States v. Gordon*, 393 F.3d 1044, 1056 (9th Cir. 2004). The use of estimation is justified when
15 it is impossible to determine an exact restitution amount. *United States v. Futrell*, 209 F.3d
16 1286, 1291-92 (11th Cir. 2000).

17 **3. Restoration of Forfeited Property to Crime Victims.** The Court has issued a
18 Preliminary Order of Forfeiture regarding the ownership interests of specific property owned and
19 controlled by the defendants either representing proceeds of the crimes or substitute property.
20 Notice of the ancillary proceeding has been published and is pending. In addition, a related civil
21 forfeiture matter, CIV -05-0768-PHX-SRB, is pending resolution on cross motions for summary
22 judgment. From testimony submitted by IRS Special Agent Linda Wallace, the assets identified
23 in these two proceedings represent all of the assets which can be identified as owned or
24 controlled by either defendant; assets which represents proceeds of the crimes for which the
25 defendants have been convicted; or are facilitating property involved in the commission of the
26 crimes for which the defendants have been convicted. As such the net sales proceeds from any
27 assets ordered liquidated in these two proceedings will, most likely, represent the only pool of
28

1 funds from which restitution to victims may be paid. In order to make the net sales proceeds
2 from forfeited property available to satisfy a Restitution Order from this Court, the Department
3 of Justice has established certain **Guidelines and Procedures for Restoration of Forfeited**
4 **Property to Crime Victims via Restitution in Lieu of Remission.** It is the intent of the Court
5 that this Restitution Order comply with these guidelines and procedures, and therefore the Court
6 makes the following findings:

7 A. All known victims have been properly notified of the restitution proceedings and are
8 properly accounted for in the Memorandum submitted by the Government for the May
9 18, 2009, hearing. Specifically, the Court is aware that many of the actual shareholders
10 cannot reasonably be expected to be found as the result of the fact they held their
11 ownership of shares of stock in the “street name” of their brokerage house. The Court
12 finds that the actions by the Government to attempt to locate the shareholders during the
13 relevant time period are both reasonable and effective. Further efforts to identify
14 unknown shareholders would be both expensive and time consuming and not likely to
15 generate the identity of additional victims. The known victims are properly accounted
16 for in this restitution order.

17 B. This Restitution Order contemplates that the Internal Revenue Service, Department
18 of the Treasury and the Asset Forfeiture Money Laundering Section (AFMLS) of the
19 Criminal Division, Department of Justice will confirm the losses described in this Order.
20 The figure presented for each victim shall be a net figure. That is, all forms of
21 compensation received by a victim, specifically including distributions or returns on
22 investments, profits, interest payments, insurance proceeds, refunds, settlement payments,
23 lawsuit awards, and any other sources of compensation related to the losses reflected in
24 this case shall be deducted from the amount of gross loss alleged by each victim. This
25 Order specifically excludes items such as attorney’s fees, accrued interest, and tax
26 liabilities or any other similar losses prohibited under 28 C.F.R. § 9.8(b).

1 C. Based upon the Motion to Amend the Preliminary Order of Forfeiture, supported by
2 the affidavit of IRS Special Agent Wallace, the Court finds that reasonable efforts to
3 locate additional assets have been undertaken by the Government. These efforts have
4 failed to identify any proceeds of the crimes for which the defendants were convicted nor
5 property which facilitate those crimes. The property and proceeds, if it exists, has been
6 concealed and placed beyond the reach of this Court. Therefore, the Court finds the
7 victims do not have recourse reasonably available to other assets from which to obtain
8 compensation for their losses.

9 D. The Court also finds that there is no evidence to suggest that any of the victims
10 identified herein knowingly contributed to, participated in, benefitted from, or acted in
11 a willfully blind manner toward the commission of the offenses underlying the forfeiture
12 or the related offenses for which defendants have been convicted. To the extent that any
13 such evidence is obtained during the period required to resolve the Restoration to victims,
14 AFMLS is ordered not to include such an individual in the pool of funds for distribution
15 and may, in its discretion, present the newly obtained evidence to this Court for
16 reconsideration of the restitution order as to the individual.

17
18 **4. Disposition of individual restitution requests.** The United States has submitted a
19 spreadsheet which summarizes the approximately 123 restitution requests received. For each,
20 the spreadsheet contains the name of the person requesting restitution, the address (if known),
21 the amount of the claim and the number of UniDyn shares held. The number of shares held has
22 been verified in one of two ways: (1) a victim's name is listed in trial exhibit 110, the National
23 Stock Transfer listing of UniDyn shareholders, or (2) a victim sent to the United States
24 Attorney's Office copies of his or her stock brokerage account statement detailing the victim's
25 UniDyn holdings.

1 A. Denied claims. Based upon the arguments presented by the parties and a review of
 2 the submitted materials, the Court concludes that the claims of victims numbers 10, 11, 12, 22,
 3 33, 38, 43, 44, 45, 52, 61, 63, 72, 74 and 92 should be denied because none of these people are
 4 crime victims as defined in the Crime Victims' Rights Act.

5 Review of the stock transfer records reveals that victims 10, 11, 12, 33, 74 and 92 all
 6 acquired their shares in 1986, long before UniDyn was created, and were related to the shell
 7 corporation, Macaw. These victims incurred no cost in acquiring the shares.

8 Victims 22, 43, 44, 45 and 52 were all affiliated with Y2 Ultra Filter, the company that
 9 Gentry worked for after he left UniDyn. These Y2 affiliated persons seek restitution for alleged
 10 wrongs committed by Gentry while he worked at Y2. Neither Gentry nor Jenkins was charged
 11 or convicted of any offenses involving Y2.

12 Victim 38's claim is made in the name of UniDyn Corporation by its current President and
 13 CEO. This claim is based upon the contention that "Defendants caused the collapse of a multi-
 14 million dollar, NASDAQ listed Corporation...The fact that all financial filings for UniDyn prior
 15 to 2001 were fraudulent proves that the company was the principal victim in this case." (Victim
 16 Impact Statement, ¶1.) This case was charged and tried on the theory that through a securities
 17 fraud and wire fraud conspiracy, defendants defrauded investors and stockholders. Defendants
 18 were neither charged with nor convicted of looting UniDyn Corporation. UniDyn is not named
 19 as a victim of any of the offenses of which defendants stand convicted.

20 Lastly, victims 61, 63 and 72 claim no financial loss whatsoever. Victim 61 submitted
 21 copies of stock certificates, but has not claimed any sort of pecuniary loss. Victim 63 says he
 22 has no records that he ever purchased or sold UniDyn stock and he makes no claim that he did.
 23 Victim 72 expressly disavows being a victim.

24 For the reasons set forth above, the Court finds the claims of victims 10, 11, 12, 22, 33,
 25 38, 43, 44, 45, 52, 61, 63, 72, 74 and 92 are not cognizable.

26 B. Claims which are partially granted and partially denied. Although the Mandatory
 27 Victim Restitution Act contains express provisions for certain types of consequential damages
 28 in a case of bodily injury, *see, e.g.* 18 U.S.C. § 3663A(b)(2), in a property or financial crime
 consequential damages remain generally unavailable in restitution. *United States v. Brock-*

1 *Davis*, 504 F.3d 991, 1002 (9th Cir. 2007). Victim 36's claim includes "an additional \$75,000
2 of money to pay my 2000 taxes." (Victim 36's cover letter, 5th full paragraph). This
3 consequential damage is not compensable. The remainder of his claim is cognizable and
4 persuasive. Therefore, the Court orders restitution to victim 36 in the amount of \$240,313.

5 Victim 90's claim seeks recompense for "114,518 shares at a cost of \$95,104.15 and an
6 additional \$61,820 in interest we owe on our mortgage." (Victim Impact Statement, ¶2.) The
7 payment of more than \$61,000 in interest on a home equity or mortgage loan taken out to buy
8 UniDyn stock is consequential damage and not direct and proximate. The remainder of victim
9 90's claim is cognizable and persuasive. Accordingly, the Court Orders restitution to victim 90
10 in the amount of \$95,104.15.

11 Victim 31's claimed loss of \$83,363 must be reduced. Victim 31 sold 40,000 shares of
12 UniDyn stock in February, 2000 and made a handsome profit. The amount of profit must be off-
13 set against the claimed loss which was later suffered. The Court finds the proper loss figure for
14 victim 31 to be \$40,551.66, based upon the calculations provided by the United States which
15 demonstrate how this figure was determined. The Court adopts these calculations.

16 C. Claims which are provisionally granted pending receipt of further information.

17 Several claims have been submitted with what the Court finds to be insufficient information.
18 Victim 23 lives in Australia and submitted a claim. The Government verified that he purchased
19 3050 shares and he claims that "[t]he cost of the shares as per the Merrill Lynch Contract Note
20 10260894 dated 14 December 1999 was \$11,655.69." (Victim Impact Statement, ¶2.) Victim
21 23 has not yet responded to the United States Attorney's letter requesting documentation in
22 support of the claim.

23 Victim 47 also lives in Australia and it has been verified that she owned 2000 shares,
24 which she says were a gift to her. She plausibly claims that at the time she obtained the UniDyn
25 shares, they were worth \$0.98 per share, (Victim Impact Statement, ¶2). Victim 47 has not,
26 however, responded to the United States Attorney's letter requesting documentation in support
27 of the claim.

1 Victim 95's claim that she owned 5000 shares has not been verified by either of the two
2 aforementioned methods. Moreover, victim 95 has not supplied any documentation supporting
3 her claim that she owned UniDyn stock.

4 Victim 115 lives in New Zealand and appears to claim to have purchased 2500 shares at
5 \$3.93 per share. He supplied no documentation in support of his claim, but says "We are trying
6 to find exact amount paid to our broker at the time." (Victim Impact Statement, ¶¶2, 4.) This
7 Victim Impact Statement was dated April 30, 2009.

8 Victim 116 purchased 1850 shares of UniDyn stock, but has not yet supplied any
9 information concerning the price he paid for the stock. His Victim Impact Statement is dated
10 April 29, 2009 and says that he is "in the process of getting monthly statements from
11 Ameritrade." (Victim Impact Statement, ¶2.)

12 The Court requires that these victims must provide adequate documentation to support
13 their requests for restitution within 60 days of the date of this Order or their claims will be
14 denied.

15 D. Claim taken under advisement. Victim 62 testified at trial and it is believed that his
16 testimony touched upon both gain he may have realized and loss he may have suffered through
17 his purchase of UniDyn stock. His trial testimony is being transcribed and the Court wishes to
18 read it before ruling upon Victim 62's restitution claim. Accordingly, Victim 62's claim is taken
19 under advisement.

20 E. Granted claims. Neither defendant has made any specific objection to the remaining
21 restitution requests. It appears that each meets the evidentiary standards which are cited earlier
22 in this memorandum, are otherwise valid and should be ordered by the Court.

23 **5. Liquidation of assets and distribution of restitution.** The Court is aware that the
24 criminal forfeiture ancillary proceeding and the related civil forfeiture proceeding have not been
25 completed. Once the forfeiture cases have been completed then the forfeited property, if any,
26 must be liquidated. All the reasonable costs associated with the maintenance, administration and
27 liquidation of the seized property will be deducted from the gross sales proceeds. At the point
28 in time when all of the forfeited property has been liquidated, the Department of Treasury in

1 conjunction with AFMLS from Department of Justice and in consultation with the Phoenix
2 Office of the United States Attorney, shall make a determination of the prorata share which can
3 be made to the appropriate victims identified in the attached spreadsheet.

4 However, no distribution of these funds, on a prorata basis, shall be made until 60 days
5 after the Mandate issues in any appeal involved in this action. If there is a remainder of the
6 forfeited funds after distribution of 100% of the funds set out in this order to victims, that sum
7 is forfeited to the United States of America. Due to the amount of resources devoted to the
8 identification, seizure, and liquidation of these assets and the disparity in time required to
9 liquidate these assets, no interest will be included in the calculation of restitution to any victim.

10 **6. Relief.** Based upon the foregoing findings, IT IS ORDERED the requests for
11 restitution are granted, provisionally granted or taken under advisement, as set out with
12 particularity in the attached schedule.

13 IT IS FURTHER ORDERED that defendant Ira W. Gentry, Jr. and defendant Randy W.
14 Jenkins are jointly and severally liable for the full amount of restitution herein ordered. While
15 incarcerated, payment of criminal monetary penalties are due during imprisonment at a rate of
16 not less than \$25.00 per quarter and payment shall be made through the Bureau of Prisons'
17 Inmate Financial Responsibility Program. As to both defendants, the balance of criminal
18 monetary penalties is due in equal monthly installments of \$300.00 over a period of 35 months
19 to commence 30 days after the release from imprisonment to a term of supervised release. Credit
20 will be afforded defendants for any and all amounts realized by victims through the restoration
21 process that is discussed earlier in this order.

22 DATED this 19th day of June, 2009.

23
24
25 

26 Susan R. Bolton
27 United States District Judge
28

Granted

Victim Number		Name	Monetary Loss	# of UniDyn Shares Held
1		Readence, James	\$ 6,086.00	33,000
2		Backfish, S.	\$ 28,204.46	13,500
3		Vreeland, Ward	\$ 2,600.00	20,000
4		Schroder, Sharyn	\$ 7,000.00	6,959
5		Hurd, Mary and David	\$ 5,000.00	5,000
6		D.K. Contracting, Inc.	\$ 59,543.50	54,300
7		Usher, Ron	\$ 37,035.00	13,000
8		Kordas, Bruce	\$ 14,206.00	30,000
8	A	Kordas Auto and Truck Services, Inc.	\$ 11,614.00	20,000
9		Liebke, Kenneth	\$ 9,480.00	10,000
13		LeMaster, Richard	\$ 1,722.00	1,000
14		Gilbert, Graydon and Jane	\$ 5,000.00	2,500
15		Taylor, Gregory	\$ 82,812.87	209,000
16		Mill, Stephen	\$ 1,913.55	500
19		Lairmore, Bruce	\$ 1,500.00	1,500
20		Yortiss, Aaron	\$ 414,930.00	258,000
21		Kragerud, Donald & Judith	\$ 10,000.00	10,000
24		Bassler, Allen and Wanda	\$ 10,000.00	10,000
25		Fremouw, Robert	\$ 3,028.00	3,000
26		Curran, Lori	\$ 500.00	500
27		Coloccia, Phillip	\$ 1,250.00	500
28		Parks, Donnie	\$ 13,170.75	20,000
29		Fischer, Peter	\$ 4,002.00	1,000
30		Koivu, Linnea and Jeffrey	\$ 265.00	100
31		CE and TK Wardle Family Trust	\$ 40,551.66	70,000
32		Henry, Christopher	\$ 1,000.00	500
34		Burnett, Hartwell	\$ 10,871.00	10,000
35		Erickson, Andrea SEP IRA Account	\$ 11,272.50	3,000
36		McNitt, Scott	\$ 240,313.00	217,100
36	A	McNitt, Lisa Roth IRA Account	\$ 3,385.00	2,000
36	B	McNitt, Scott Roth IRA Account	\$ 5,724.00	3,400

37		Campbell, Robert	\$ 11,804.48	56,711
39		Fabert, Brodniak.	\$ 26,073.12	48,000
40		Tatum, Gary	\$ 12,832.25	10,000
41		Maw, Raymond J.	\$ 1,290.00	3,000
42		Vreeland, Wayne	\$ 7,200.00	40,000
46		Madia, Robert and Anna Mae	\$ 239,235.00	110,000
48		Beck, Robert	\$ 1,744.15	800
49		Kordas, Thomas and Cheryl	\$ 44,080.63	20,700
50		South, Frank	\$ 3,437.46	2,000
51		Haller, Eric	\$ 12,248.00	10,973
53		Johnston, Gregory	\$ 19,285.90	7,000
54		Ireland, Diane	\$ 3,946.87	4,870
55		Anderson, Thomas	\$ 225,000.00	638,789
56		Adolphsen, Steven	\$ 1,290.00	3,000
57		Gazdzinski, Robert	\$ 73,794.06	36,820
58		Moody, James	\$ 3,205.50	20,000
59		Weissman, Philip	\$ 14,237.67	30,000
60		O'Connor, Susan	\$ 8,951.32	10,000
64		Celeste, Lawrence and Pauline	\$ 2,118.00	1,070
65		Lian, Craig and Cathy	\$ 16,816.46	110,040
66		Utt, Larry and Renee	\$ 12,719.00	40,000
67		Massad, Christopher	\$ 20,000.00	20,000
68		Readence, John	\$ 10,000.00	39,100
69		Lian, Craig and Cathy IRA account	\$ 9,205.00	11,100
70		Olwell, William	\$ 38,932.95	18,200
71		Fuller, Richard	\$ 41,076.00	32,127
73		Makara, Penny S.	\$ 129.50	50
75		Gutierrez, Edward	\$ 3,555.25	1,000
76		Richman, James and Penne	\$ 18,238.73	26,875
77		Henderson, Peggy	\$ 9,650.00	4,500
78		Gilbert, Ivy	\$ 4,400.00	10,000
78	A	GV Financial Group	\$ 6,600.00	15,000
78	B	Gilbert-Vigue, Kris M.	\$ 3,520.00	8,000
79		Gehner, Claus and Cher	\$ 49,754.53	83,000
80		Corrigan, James	\$ 6,000.00	6,000

81		Violette, Leo	\$ 5,000.00	5,000
82		Provazek, Kathleen	\$ 6,376.62	14,228
83		Vigue, James F. IRA Account of	\$ 8,800.00	20,000
84		Smith, Michael and Erin	\$ 3,060.00	6,000
85		Richman, Morgan	\$ 6,218.00	11,594
86		Cory, Richard and Donna	\$ 1,988.50	700
87		Auswater Systems	\$ 7,600.00	4,500
88		Pacchainelli, Mark	\$ 750.00	500
89		Gaines, Paul	\$ 2,582.20	5,000
90		Coulter, Anne Marie and Jeffrey	\$ 95,104.15	114,518
91		McNitt, Charlene K.	\$ 7,507.75	4,740
93		Ambello Bacterial Cultures PTY Ltd.	\$ 80,380.00	140,900
94		R & P Dive Superannuation Fund	\$ 7,141.00	10,000
96		Grieb, Stacy	\$ 27,070.00	10,180
97		Neef, Wendy IRA Account	\$ 4,518.90	2,900
98		Neef, Arthur and Wendy	\$ 40,408.05	25,550
99		Kwan-Derber, Julie	\$ 1,000.00	1,000
100		McNitt, Paul and Tami	\$ 23,861.00	11,265
101		Erick, Steve and Tanya	\$ 3,799.75	2,400
102		McNitt, Mark and Rebecca	\$ 18,090.72	15,912
102	A	McNitt, Rebecca IRA aaccount	\$ 3,255.46	3,160
103		Vrsek, Frank	\$ 4,038.97	3,225
103	A	Vrsek, Frank IRA Account	\$ 2,819.22	1,800
104		W. M. Thacker	\$ 16,564.25	12,000
105		Francis, Robert	\$ 2,802.80	2,050
106		Farmer, Rolf and Janeen	\$ 4,100.35	3,000
107		Lian, Larry	\$ 13,598.44	4,835
108		Kordas, Paul and Gayle	\$ 7,349.13	7,000
109		Sobel, Giordana (Stephanie Valentine Custodian)	\$ 227.50	200
110		Valentine, Stephanie	\$ 2,217.50	3,500
111		Valentine, Bruce and Stephanie	\$ 1,224.50	900
112		Valentine, Bruce	\$ 1,897.50	1,000
113		Mauer, Eric	\$ 12,219.71	3,000
114		Amundson, Gary and Dianne	\$ 2,186.64	650

117		Zolten, Avram J.	\$ 70,476.42	44,359
117	A	Zolten, Avram J. SEP IRA Account	\$ 66,646.75	39,750
118		Begnoche, Normand	\$ 8,817.50	12,000
119		Miller, John C.	\$ 1,065.95	1,600
Total			\$ 2,579,117.35	3,059,000

Provisionally Granted Pending Further Documentation

Victim Number	Name	Monetary Loss	# of UniDyn Shares Held
23	Pohlman, J.	\$ 11,655.69	3,050
47	Murray, Eileen	\$ 2,000.00	2,000
95	Provazek, Callie	\$ 1,000.00	5,000
115	Deere, Michael	Unknown	Unknown
116	Burrus, Trenton	Unknown	1,850

Under Advisement

Victim Number	Name	Monetary Loss	# of UniDyn Shares Held
62	Provazek, John	\$ 72,814.00	364,070